IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH W. MARVIN 5111 Ash Drive Pocono Summit, PA 18346-9745, **Plaintiff,** **vs.** **NUCLEAR BLAST AMERICA, INC.** 5741 Buckingham Pkwy., Unit C Culver City, CA 90230, **Defendant.**	: : : : : : : : :	**Civil Action No. _______________** **Jury Trial Demanded**

CIVIL COMPLAINT

A. Jurisdiction and Venue

1. Jurisdiction is vested in this Court by virtue of Title 17 U.S.C. §§ 101-810, to wit, the Copyright Act of 1976.
2. Venue is proper under applicable law.

B. The Parties

3. The Plaintiff, JOSEPH W. MARVIN (hereinafter referred to as ”MARVIN”), is a private adult individual who resides at the above address; doing business at the address above-indicated, and he is the rightful and lawful copyright holder of certain music works works, inclusive but not limited to the musical composition titled, “900 A.D”.
4. The Defendant, Nuclear Blast, Inc. (hereinafter referred to as “NUCLEAR”), is a domestic entity with their principal office located at the above address; said defendant is the manufacturer and/or distributor and/or sellers of, inter alia, recorded music.

C. The Facts

5. Plaintiff MARVIN duly applied for, and was granted, a copyright registration by

the Library of Congress confirming his ownership of the copyright of the musical composition "900 A.D." (hereinafter referred to as the "Subject Song"); a copy of the Certificate of Registration issued by the Library of Congress pertaining to the Subject Song is attached hereto and is incorporated by reference as though fully set forth herein and made a part hereof.

6. Subsequent to MARVIN's creation of the Subject Song, and his acquisition of the registered copyright to the Subject Song, defendant released a song called "Curse My Name" (hereinafter referred to as the "New Song"), which contained copying of constituent elements of the original Subject Song.

7. The Subject Song is an original song, which is copyrightable under Title 17 of the United States Code, to wit, the Copyright Act of 1976 as amended.

8. The Subject Song contains "protectable elements" afforded copyright protection, which protectable elements are inclusive, but not limited to the unique musical content.

9. Subsequent to the creation of the Subject Song, defendants infringed upon plaintiff MARVIN's copyright by recording, mixing, mastering, distributing, selling, licensing, and/or receiving revenue from song entitled, "Curse My Name."

10. Defendant's song is so substantially similar to plaintiff MARVIN's Subject Song so as to constitute actionable unlawful copyright infringement under Title 17 of the United States Code and applicable case law.

D. Claims

COUNT ONE: VIOLATION OF TITLE 17, UNITED STATES CODE SEC 115 ET SEQ.

COPRYIGHT INFRINGMENT – MECHANICAL LICENSE/ROYALTIES

11. Paragraphs 1 through 10 inclusive are incorporated by reference as though fully set forth herein and made a part hereof.

12. Subsequent to plaintiff MARVIN's creation of the Subject Song, said Subject Song was heard by defendant NUCLEA; defendant NUCLEAR having had access to to the Subject Song.

13. Defendant NUCLEAR's access to the Subject Song was inclusive, but not limited to the following:

    a. MARVIN had the song on MySpace as early as 2007.

    b. MARVIN and the band, Blind Guardian, who composed the New Song were "friends" on MySpace giving them access to MARVIN's music.

14. NUCLEAR conferred with Blind Guardian in the creation of the New song, which was based on original music elements of the Subject Song.

15. NUCLEAR improperly and unlawfully filed one or more copyright registrations with the Library of Congress for the New Song, claiming sole authorship of New Song, despite the fact that the song was derivative of plaintiff's copyright Subject Song.

16. Defendant NUCLEAR commercially released the New Song which song was an unlawful infringement of plaintiff MARVIN's copyrighted Subject Song; said released New Song generated substantial revenue to the benefit of defendant, which revenue was derived form the unlawful sale and licensing of the New Song, including but not limited sales of phonographic records (as the term is liberally known to construe in the music business), digital downloads, ringtones, ringbacks, synchronization and other licensing fees, etc.

17. Under Title 17 of the United States code, prior to said defendant's commercial release

of the New Song for public consumption, said defendant was required to acquire a mechanical license from plaintiff.

18. Defendant's failure to obtain a proper mechanical license from Plaintiff MARVIN is a violation of Title 17 of the United States Code.

19. Defendant is liable to plaintiff for failure to obtain a mechanical license from plaintiff MARVIN as required by Title 17 of the United States Code.

20. In the alternative, in the event that this Court deems that no mechanical license was required, due to the prior publication of the Subject Song by plaintiff, then in such event, defendant's conduct is still violative of Title 17 of the United States Code for failure by defendant to pay any compulsory license fees to plaintiff MARVIN as mandated by applicable copyright laws.

21. Defendant is liable to plaintiff for all revenues generated from the sales and licensing of all products and services containing New Song thereupon for violation of Section 115 et seq. of Title 17 of the U.S. Code.

WHEREFORE, on Count I, plaintiff MARVIN demands judgment in his favor, and against defendant as follows:

a. For actual damages in excess of Seventy Five Thousand Dollars ($75,000);

b. For statutory damages of One Hundred and Fifty Thousand Dollars ($150,000);

c. For reasonable counsel fees and litigation costs;

d. For such other relief as this Court may deem proper.

COUNT II – COPYRIGHT INFRINGEMENT:

VIOLATION OF Title 17 U.S.C. §§ 101-810

22. Paragraphs 1 through 21, inclusive are incorporated by reference as though fully set

forth herein and made a part hereof.

23. Defendant recorded produced, mixed and mastered the New Song that infringed upon Plaintiff's Subject Song.

24. Defendant materially altered plaintiff's copyrighted Subject Song without plaintiff MARVIN's prior written consent.

25. Defendant then illegally and unlawfully mechanically reproduced, manufactured, distributed and offered for sale and licensing the illegally infringing New Song without any regard for plaintiff and plaintiff's rights.

26. Defendant's violations continue to be ongoing.

27. Defendant is liable to plaintiff for violation of Title 17 of the United States Code, an applicable case law, pertaining to unlawful infringement.

WHEREFORE, on Count II, plaintiff MARVIN demands judgment in her favor, and against all defendants, jointly and severally, as follows:

a. For actual damages in excess of Seventy Five Thousand Dollars ($75,000);

b. For statutory damages of One Hundred and Fifty Thousand Dollars ($150,000);

c. For reasonable counsel fees and litigation costs;

d. For such other relief as this Court may deem proper.

COUNT III – CIVIL CONSPIRACY

28. Paragraphs 1 through 27 inclusive are incorporated by reference as though fully set forth herein and made a part here of.

29. Defendant has engaged in a civil conspiracy to deprive plaintiff MARVIN of his rights engaging with the band Blind Guardian, a rock band outside this court's jurisdiction to manufacture, release, distribute and sell an unlawful infringement of

plaintiff's copyrighted Subject Song.

30. Defendant's actions have been outrageous, and have been willful, wanton, malicious, and were committed with reckless disregard for the rights of plaintiffs.

31. As a result of defendants' civil conspiracy, plaintiff MARVIN has sustained damages in the form of lost profits, lost goodwill, lost prospective business, and other monetary losses.

33. Defendants are liable to plaintiffs for actionable civil conspiracy.

WHEREFORE, on Count III, plaintiff MARVIN demands judgment in his favor, and against defendant, as follows:

a. For actual damages in excess of Seventy Five Thousand Dollars ($75,000);

b. For punitive damages for a sum to be determined by the jury at trial;

c. For costs of suit and reasonable counsel fees;

d. For such other relief as this Court may deem proper

Respectfully submitted,

Dated: March 9, 2017

/Simon Rosen, Esquire/ (#6279)
Attorney I.D. #38603

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Public Catalog

Copyright Catalog (1978 to present)
Search Request: Left Anchored Name = marvin, joseph
Search Results: Displaying 14 of 24 entries

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Labeled View

900 A.D.

Type of Work:	Sound Recording and Music
Registration Number / Date:	SRu001001041 / 2008-09-22
Application Title:	900 A.D.
Title:	900 A.D.
Description:	Compact disc.
Copyright Claimant:	Joseph William Marvin, 1971- . Address: 12 Lake Drive, Gouldsboro, Pennsylvania, 18424, United States. Joseph M. Zeppy, 1963- . Address: RR1 Box 579A, Brookdale Rd, Scotrun, Pennsylvania, 18355, United States.
Date of Creation:	2008
Authorship on Application:	Joseph William Marvin, 1971- ; Citizenship: United States. Authorship: editing, music, lyrics, sound recording/performance. Joseph M. Zeppy, 1963- ; Citizenship: United States. Authorship: music, sound recording.
Rights and Permissions:	Joseph William Marvin, 12 Lake Drive, Gouldsboro, Pennsylvania, 18424, United States, (570) 269-6179, drumdr_71@yahoo.com
Copyright Note:	C.O. correspondence.
Names:	Marvin, Joseph William Zeppy, Joseph M.

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